

BORA LASKIN LAW LIBRARY



3 1761 03328 4753

**LAW'S RESPONSE TO POVERTY
1996**

VOLUME 2

INSTRUCTORS: IAN MORRISON & JUDITH KEENE

**Faculty of Law
University of Toronto**

7.5
7
67
996
2
1

AWK 1008

DORA LASZLO LAW LIBRARY

JAN 15 1996

FACULTY OF LAW
UNIVERSITY OF TORONTO

TABLE OF CONTENTS

CHAPTER I: PERSPECTIVES ON POVERTY & NEED

1. The politics of need

General Welfare Assistance Act s.7; General Welfare Regulations s.1(4), 12 1

Nancy Fraser, "Struggle Over Needs: Outline of a Socialist-Feminist
Critical Theory of Late-Capitalist Political Culture", in Linda Gordon. ed.,
Women, The State and Welfare (Wisconsin, 1990) 8

2. Defining need

Patrick Kerans, "Need and Welfare: 'Thin' and 'Thick' Approaches", in Andrew Johnson et
al., ed., Continuities and Discontinuities: The Political Economy of Social Welfare and
Labour Market Policy in Canada (Toronto: U. of T. Press, 1994) 20

D.P. Ross et al, The Canadian Fact Book on Poverty (Ottawa:
Canadian Council on Social Development, 1994) 27

C.A. Sarlow, Poverty in Canada (Vancouver: The Fraser Institute, 1992) 40

A. Mitchell & I. Morrison, Welfare Rate Cuts: The Real Issues
Backgrounder # 2 (Toronto: Ontario Social Safety NetWork, July 1995) 56

3. Poverty: Ideology & Explanations

M. Morris & J. Williamson, Poverty and Public Policy
(New York: Greenwood Press, 1986) 68

CHAPTER II: PERSPECTIVES ON WELFARE AND THE STATE

1. Perspectives on the welfare state

F. Williams, Social Policy: A Critical Introduction (Policy Press, Cambridge, 1989)
Chapter 2, "Perspectives of welfare: The existing but inadequate theoretical basis
of social policy" 79

D. Moon, "The Moral Basis of the Welfare State" in A. Gutman ed., Democracy and the Welfare State (Princeton: Princeton University Press, 1988) 92

C. Pateman, "The Patriarchal Welfare State", in A. Gutman ed., Democracy and the Welfare State (Princeton: Princeton University Press, 1988) 105

2. **Neoliberalism and the future of the welfare state**

A. Yalnizyan, Defining Social Security, Defining Ourselves (Canadian Centre for Policy Alternatives, 1993) 121

G. Teeple, Globalization and the Decline of Social Reform (Toronto: Garamond Press, 1995) Chapter 5, "Neoliberal Policies and Their Rationales". 146

CHAPTER III: THE CANADIAN WELFARE STATE & SOCIAL ASSISTANCE

1. **Overview**

A. Armitage, Social Welfare in Canada: Ideals, Realities and Future Paths (2d ed.) (Toronto, McClelland and Stewart, 1988) 163

2. **Critical perspectives on welfare in Ontario**

J. Struthers, The Limits of Affluence: Welfare in Ontario 1920-1970 (Toronto: University of Toronto Press, 1994) Introduction, Conclusion 169

3. **Introduction to issues in social assistance administration**

Coalition For Social Assistance Reform: "Social Assistance and Enhanced Verification: An Overview" 185

I. Morrison, "Facts About Social Assistance Administration that Criminal Lawyers Ought To Know", in Charged With Fraud on Social Assistance (Law Society of Upper Canada, Dept. of Continuing Legal Education, 1995) 204

Extract from The British Columbia Welfare Joke Book (Federated Anti-Poverty Groups of B.C.) 224

M. Little, "'Manhunts and Bingo Blabs': The Moral Regulation of Ontario Single Mothers" (1994) <i>Canadian Journal of Sociology</i> 233	238
K. Lawrence, "Systemic Discrimination: Regulation 8 -- Family Benefits Act: Policy of Reasonable Efforts to Obtain Financial Resources" (1990), 6 <i>Journal of Law & Social Policy</i> 57	245
<u>H.(J.) v. Hastings (County)</u> (1992) 8 Admin.L.R.(2d) 157 (Ont.Ct.Gen.Div.)	252
E. Macfarlane, "No Lock on the Door: Privacy and Social Assistance Recipients" (1995) 1 <i>Review of Current Law and Law Reform</i> 1	255

CHAPTER IV: WELFARE AND THE "FAMILY"

1. Women and poverty

P. Evans, "The Sexual Division of Poverty: The Consequences of Gendered Caring" in C.Baines et al, ed., <u>Women's Caring: Feminist Perspectives on Social Welfare</u> (Toronto: McLelland and Stewart, 1991)	265
---	-----

2. "Spouse in the house"

Selected definitions of "spouse"; Ontario Family Benefits Regulations	281
<u>Residing With a Spouse: New Rules For Determining Spousal Status</u> (unpublished MCSS Policy Directive, October, 1995)	283
<u>Warwick v. Minister of Community and Social Services</u> (1978) 5 R.F.L.(2d) 325 (Ont.C.A.)	311
<u>Re Pitts and Director of Family Benefits</u> (1985), 51 O.R.(2d) 302 (Div.Ct.)	316
<u>R. v. Rehberg</u> (1994), 111 D.L.R.(4th) 336 (NS.S.C.)	323
<u>R. v. Jantunen</u> (April 18, 1994) Ont.Ct.(Gen.Div.) [unreported]	339
S.A.M. Gavigan, "Familial Ideology and the Limits of Difference", in J. Brodie ed., <u>Women and Canadian Public Policy</u> (Toronto: Harcourt, Brace, 1996)	372
SARB Decision No. G-09-02-14	381

SARB Decision No. J-04-23-01 383

SARB Decision No. J-10-02-03R 387

SARB Decision No. L-04-02-36 404

3. Public v. Private Support

F. Steel, "The Role of the State in the Enforcement of Maintenance",
in Women, the Law and the Economy 412

S. v. K.; The Queen in Right of Ontario, Intervenant
(1986), 55 O.R.(2d) 111 (Dist.Ct.) 418

Re Clifton and Director of Income Maintenance 424

SARB Decision No. K-07-17-19 429

SARB Decision No. J-03-04-20 435

SARB Decision No. H-04-24-12 443

CHAPTER V: WELFARE AND WORK

1. Assumptions of employability

(a) The "able-bodied" worker -- disability and social assistance

Family Benefits Regulation s.1(5) definitions, "disabled person",
"permanently unemployable person" & A. Mitchell & I. Morrison, Welfare Rate Cuts:
The Real Issues *Backgrounders* # 1, "People with disabilities" 455

Report of Disability Determination Project Team (Ontario; Ministry of Community and Social
Services 1992) 457

SARB Decision No. G-02-12-06R 467

SARB Decision No. K-09-04-05 473

SARB Decision No. K-02-29-12 478

SARB Decision No. J-03-18-05	480
 (b) Women and employment	
P. Evans, "Single Mothers and Ontario's Welfare Policy: Restructuring the Debate", in J. Brodie ed., <u>Women and Canadian Public Policy</u> (Toronto: Harcourt, Brace, 1996)	482
SARB Decision No. K-10-30-05	489
SARB Decision No. L-08-17-05	495
 2. Workfare & Learnfare	
 (a) Introduction	
Extract, <u>The Common Sense Revolution</u> , "Workfare and Learnfare"	500
A. Noel, "The Politics of Workfare", in Sayeed, ed. <u>Workfare: Does it Work?</u> <u>Is It Fair?</u> (Montreal: Institute for Research on Public Policy, 1995)	501
National Council of Welfare, <u>Incentives and Disincentives To Work</u> (1993) Introduction	514
 (b) Canadian work to welfare experiences	
P. Evans, "Linking Welfare to Jobs: Workfare, Canadian Style" <i>rev 105 wot 1995</i> in Sayeed, ed. <u>Workfare: Does it Work? Is It Fair?</u> (Montreal: Institute for Research on Public Policy, 1995)	534
Metropolitan Toronto Social Services Division, <u>Job Incentive Project:</u> <u>One Year Evaluation</u>	546
I. Morrison, "Compulsory Altruism: Welfare, Work and the Volunteer World in Canadian Income Security Reform" (1994)	555
R. Ng "Immigrant Women: The Construction of a Labour Market Category" (1990) 4 <i>Can. Journal of Women & Law</i> 96	580

(c) **Learnfare**

T. Corbett et al., "Learnfare: The Wisconsin Experience" (1989) 12 Focus 1 589

Ontario, Ministry of Community and Social Services, New Eligibility Rules For 16/17 Year Old Youth [1995, unpublished policy guidelines] 595

CHAPTER VI: WELFARE ADMINISTRATION AND PROCEDURAL FAIRNESS

1. The Due Process Response

Cholak v. Wostok [1994] 1 W.W.R. 139 (Alta. S.C.) 603

C. Reich, "Individual Rights and Social Welfare: The Emerging Legal Issues", (1965) 74 *Yale Law Journal* 1245 606

Goldberg v. Kelly (1970) 397 U.S. 254 611

A. Sarat, "...The Law is All Over": Power, Resistance and the Legal Consciousness of the Welfare Poor" (1990), 2 *Yale J. of Law and the Humanities* 343 621

2. The Social Assistance Review Board

J. Leatch, "Procedural Fairness in the Social Assistance System", Background paper for the Social Assistance Review Committee, August, 1987 638

Social Assistance Review Board, 1989-90 Annual Report 668

Advisory Group on New Social Assistance Legislation, Back on Tract (Toronto: Queen's Printer, 1991) 676

Letter from Laura Bradbury, Chair, Social Assistance Review Board to Hon. Tony Silipo, Minister of Community & Social Services, 22 December 1993 680

SARB Fact Sheet 683

Hansard (Ontario) 12 April 1994 5530, 5531 690

4. **The External Critique of Procedural Fairness and "Liberal Legalism"**

J. Handler, The Conditions of Discretion (New York: Russell Sage Foundation, 1986) 692

Nathalie des Rosiers and Bruce Feldthusen, "Discretion in Social Assistance Legislation" (1992) 8 *Journal of Law and Social Policy* 204 721

CHAPTER VII: THE CHARTER OF RIGHTS

M. Jackman, "Constitutional Contact With the Disparities in the World: Poverty As a Prohibited Ground of Discrimination Under the Canadian Charter and Human Rights Law" (1994) II *Review of Constitutional Studies* 77 735

J. Fudge, "The Privatization of the Costs of Social Reproduction: Some Recent Charter Cases" (1989) 3 *Canadian Journal of Women and the Law* 246 759

Re Phillips and Lynch (1986), 27 D.L.R. (4th) 156 763

Silano v. The Queen in Right of B.C. (1987), 33 C.R.R. 331 765

R. Hasson, "What's Your Favourite Right?", (1989) 5 *Journal of Law and Social Policy* 1 772

Re Dartmouth/Halifax County Regional Housing Authority and Sparks (1993), 101 D.L.R. (4th) 224 773

Camire v. Winnipeg (1989) 57 Man. R. (2d) 193 780

Clemons v. Winnipeg (April 28, 1994; Man. Ct. Q.B.) 782

Social Assistance Review Board, Decision G-12-08-21 792

CHAPTER VIII: THE RIGHTS DEBATE AND STRUGGLES FOR SOCIAL TRANSFORMATION

1. The Case Against Rights

M. Tushnet, "An Essay on Rights" (1984), 62 *Texas Law Review* 1363 809

A. Petter and A. Hutchinson, "Rights in Conflict: The Dilemma of Charter Legitimacy" (1989), 23 *U.B.C. Law Rev.* 531 817

2. The Arguments for Rights

A. Hunt, "Rights and Social Movements: Counter-Hegemonic Strategies", (1990) 17 *Journal of Law and Society* 309 827

P. Williams, "Alchemical Notes: Reconstructing Ideals from Deconstructed Rights", (1987) 22 *Harv. Civ. Rights-Civ. Liberties L. Rev.* 401 837

E. Schneider, "The Dialectic of Rights and Politics" (1986), 61 *New York Univ. Law. Rev.* 589 849

CHAPTER IX: CONCEPTUALIZING A ROLE FOR LAW IN STRUGGLES FOR SOCIAL TRANSFORMATION

Gerald Lopez, "The Work We Know So Little About" (1989), 42 *Stanford Law Review* 1 857

P. Friere, Pedagogy of the Oppressed (New York: Continuum Publishing Company, 1989) 861

S. Baxter, No Way to Live (Vancouver: New Star Books, 1988) 877

A. Alfieri, "The antinomies of Poverty Law and a Theory of Dialogic Empowerment", (1986-87) *XVI Rev. of Law and Social Change* 659 882

APPENDIX 1

Family Benefits Act and Regulation 366 889

General Welfare Assistance Act and Regulation 537 938